

Applicant : Augustine M. K. Choi et al.
Serial No. : 10/053,535
Filed : January 15, 2002
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Attorney's Docket No.: 13681-003002

REMARKS

The application referenced above was filed to continue prosecution of the claims pending in U.S.S.N. 09/538,788. The amended claimset provided herein reflects the invention of Group II as elected in the parent application. Remarks presented here address certain issues raised by the Examiner in the second, non-final Office Action (mailed July 17, 2001) for that application.

Claims 42 to 69 are now pending in this application. Applicants have cancelled claims 7 to 29 without prejudice, and have added new claims 42 to 69. Support for the new claims can be found throughout the specification, e.g., at original claims 7, 13, 20, 21 and 28 (all of which are now cancelled); page 5, lines 5 to 7; page 5, line 23, to page 6, line 5; page 7, lines 8 to 10; page 9, lines 13 to 19; page 10, line 13; page 12, lines 9 to 23; page 16, lines 10 to 14; and at page 27, lines 19 to 20. With respect to the disorders that are not lung-specific, note in particular the systemic LPS *in vivo* experiments described at pages 28, 31 to 32 and 35 to 36. No new matter has been added.

Applicants submit that Otterbein et al. (Am. J. Physiol. 276 (Lung Cell. Mol. Physiol. 20): L688-L694 (1999); hereinafter "the Otterbein publication") is not prior art citable against the present application. Applicants respectfully point out that the present application has a filing date of March 30, 2000, and claims priority from provisional application number 60/127,616, filed on April 1, 1999 (see page 1 of the present application). The Otterbein publication is the inventor's own work, and was published within one year of filing of both the provisional and utility applications. It therefore is not prior art under any subsection of 35 U.S.C. § 102. As evidence thereof, applicants submit herewith a statement from the American Physiological Society, the publisher of the Otterbein publication, which indicates that the volume containing the Otterbein publication was mailed to subscribers on March 31, 1999.

Applicants also submit herewith an *In re* Katz Declaration signed by Leo E. Otterbein establishing that the third author of the Otterbein publication, Lin L. Mantell, did not make an inventive contribution to the present application. Further, applicants' representative has determined that Patty Lee was erroneously named as a co-inventor on the present and parent application, and is in the process of correcting inventorship.

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Attached is a marked-up version of the changes being made by the current amendment.

Applicant asks that all claims be examined and allowed. No fees are believed to be due. However, please apply any charges or credits to Deposit Account No. 06-1050, referencing Attorney Docket No. 13681-003002.

Respectfully submitted,

Date:

July 17, 2002

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Version with markings to show changes made

In the claims:

Claims 7 to 29 have been cancelled without prejudice.

Claims 42 to 69 have been added.